

ESTTA Tracking number: **ESTTA799516**

Filing date: **02/06/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Zhu Zhi Qin		
Entity	Individual	Citizenship	CHINA
Address	WuAi Village, Jiangdong Street No. 3, Building 88 Yiwu, Zhejiang, CHINA		

Attorney information	Morris E. Turek YourTrademarkAttorney.com 167 Lamp and Lantern Village, #220 Chesterfield, MO 63017-8208 UNITED STATES morris@yourtrademarkattorney.com Phone:(314) 749-4059
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Registration Subject to Cancellation

Registration No	4767674	Registration date	07/07/2015
Registrant	Barlar Store 122A E Foothill Blvd #107 Arcadia, CA 91006 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2008/09/01 First Use In Commerce: 2008/09/01 All goods and services in the class are cancelled, namely: Non-medicated skin care preparations

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
Registrant not rightful owner of mark for identified goods or services	Trademark Act Sections 14(1) and 1

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	79191743	Application Date	03/24/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PIL'ATEN		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 0 First Use In Commerce: 0 Soap; stain removers; shoe wax; abrasive pastes; essential oils; incense; cosmetics; dentifrices; shampoos for pets; cosmetic kits

Attachments	79191743#TMSN.png(bytes) PILATEN Petition for Cancellation with Exhibit.pdf(207006 bytes)
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Signature	/met20/
Name	Morris E. Turek
Date	02/06/2017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Zhu Zhi Qin)	
Petitioner,)	
)	
v.)	Cancellation No. _____
)	
Barlar Store)	
Registrant.)	
_____)	

PETITION FOR CANCELLATION

Zhu Zhi Qin (“Petitioner”) is a Chinese citizen with a mailing address of No. 3, Building 88, WuAi Village, Jiangdong Street, Yiwu, Zhejiang China.

According to the USPTO records, the name and address of the current owner of U.S. Registration No. 4,767,674 is Barlar Store, 122A E. Foothill Blvd., #107, Arcadia, California 91006 (“Registrant”).

Pursuant to 15 U.S.C. §1064, Petitioner believes she is damaged by Registration No. 4,767,674 and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Registrant is the owner of U.S. Registration No. 4,767,674 for the mark PIL’ATEN (stylized) for “non-medicated skin care preparations,” in International Class 3.
2. Registrant’s registration issued on the Principal Register on July 7, 2015. As such, Registrant’s registration is not incontestable.
3. The underlying application filing date of Registrant’s registration is September 30, 2014.

4. Registrant's registration states that Registrant's first use of its PIL'ATEN mark occurred at least as early as September 1, 2008, and that Registrant's first use of its PIL'ATEN mark in interstate commerce occurred at least as early as September 1, 2008.

COUNT I
PRIORITY AND LIKELIHOOD OF CONFUSION

5. Petitioner realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

6. Long before any date on which Registrant could reasonably rely, Petitioner adopted and commenced use of the trademark PIL'ATEN in the United States in connection with the advertising and sale of non-medicated skin care preparations.

7. Petitioner has continuously used her PIL'ATEN trademark in interstate commerce ever since she first adopted the trademark.

8. As a result of Petitioner's continuous use of her PIL'ATEN trademark in connection with her products, the relevant segment of the purchasing public has come to exclusively associate the PIL'ATEN trademark with Petitioner's products. As such, the PIL'ATEN trademark is extremely valuable to Petitioner and has developed a substantial amount of goodwill and recognition among the relevant segment of the purchasing public.

9. Petitioner's PIL'ATEN trademark has been used, and continues to be used, by the relevant segment of the purchasing public to identify the source of Petitioner's products and to distinguish such products from the products and services offered by others.

10. Petitioner is the owner of all right, title, and interest in and to the PIL'ATEN trademark as used in connection with her products.

11. Petitioner's first use of her PIL'ATEN trademark precedes the underlying application filing date of Registrant's registration, as well as Registrant's first use dates as listed in the registration.

12. Petitioner is the owner of Application Serial No. 79191743 for the mark PIL'ATEN (stylized) for "soap; stain removers; shoe wax; abrasive pastes; essential oils; incense; cosmetics; dentifrices; shampoos for pets; cosmetic kits," in International Class 3. Petitioner has attached a status and title copy of her application as **Exhibit A**.

13. On September 21, 2016, the Trademark Examining Attorney assigned to review Petitioner's application for PIL'ATEN (stylized) cited Registrant's Registration No. 4,767,674 for PIL'ATEN (stylized) as a basis for refusing registration of Petitioner's PIL'ATEN (stylized) trademark under Trademark Act §2(d), thereby causing harm and damage to Petitioner.

14. Registrant's PIL'ATEN (stylized) mark is confusingly similar in appearance, sound, and commercial impression to Petitioner's PIL'ATEN trademark.

15. The products recited in Registrant's registration for PIL'ATEN (stylized) are similar and/or related to the products offered under Petitioner's PIL'ATEN trademark, as well as the products for which Petitioner's PIL'ATEN (stylized) trademark is pending registration.

16. Petitioner is damaged by Registration No. 4,767,674 since Registrant's PIL'ATEN (stylized) mark, when used on or in connection with its products, so resembles Petitioner's PIL'ATEN mark as to be likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Registrant with Petitioner, or as to the origin, sponsorship, or approval of Registrant's products by Petitioner.

17. Petitioner is further damaged by Registration No. 4,767,674 because such registration gives color of exclusive statutory rights to Registrant in violation and derogation of the prior superior rights of Petitioner.

COUNT II
APPLICATION VOID *AB INITIO*

18. Petitioner realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

19. Upon information and belief, Registrant purchased Petitioner's PIL'ATEN skin care products from one of Petitioner's distributors.

20. At no time did Petitioner assign or transfer any ownership rights in the PIL'ATEN trademark to Registrant, nor did Petitioner ever agree that Registrant was to be the owner of the PIL'ATEN trademark in the United States.

21. Without the knowledge or consent of Petitioner, Registrant applied to register PIL'ATEN (stylized) on September 30, 2014 for "non-medicated skin care preparations," in International Class 3 (Serial No. 86410850).

22. Registrant was not the owner of all right, title, and interest in and to the PIL'ATEN (stylized) trademark in the United States at the time Registrant filed Application Serial No. 86410850.

23. Registrant's application was void *ab initio* since Registrant was not the owner of the PIL'ATEN (stylized) trademark at the time Registrant applied to register the trademark.

24. Petitioner is harmed and damaged by Registrant's Registration No. 4,767,674 because Petitioner is unable to obtain a federal registration for her PIL'ATEN (stylized) trademark while Registrant's registration exists on the Principal Register.

25. Petitioner is further harmed and damaged by Registration No. 4,767,674 because such registration gives color of exclusive statutory rights to Registrant in violation of the law and to the exclusion of Petitioner.

WHEREFORE, Petitioner is damaged by U.S. Registration No. 4,767,674 and prays that the same be canceled pursuant to 15 U.S.C. §1064.

Respectfully submitted,

ZHU ZHI QIN

By: _____/met20/
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Dated: 2/6/2017

*Attorney for Petitioner
Zhu Zhi Qin*

EXHIBIT A

Generated on: This page was generated by TSDR on 2017-02-06 12:50:03 EST

Mark: PIL'ATEN

PIL'ATEN

US Serial Number: 79191743

Application Filing Date: Mar. 24, 2016

Register: Principal

Mark Type: Trademark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Sep. 23, 2016

Mark Information

Mark Literal Elements: PIL'ATEN

Standard Character Claim: No

Mark Drawing Type: 5 - AN ILLUSTRATION DRAWING WITH WORD(S) /LETTER(S)/ NUMBER(S) INSTYLIZED FORM

Color(s) Claimed: Color is not claimed as a feature of the mark.

Related Properties Information

International Registration Number: 1309140

International Registration Date: Mar. 24, 2016

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Soap; stain removers; shoe wax; abrasive pastes; essential oils; incense; cosmetics; dentifrices; shampoos for pets; cosmetic kits

International Class(es): 003 - Primary Class

U.S Class(es): 001, 004, 006, 050, 051, 052

Class Status: ACTIVE

Basis: 66(a)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: Yes

Currently 66A: Yes

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Zhu Zhi Qin

Owner Address: No. 3, Building 88,
WuAi Village,; Jiangdong Street, Yiwu; Z hejiang

CHINA

Legal Entity Type: INDIVIDUAL

Citizenship: CHINA

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: YIWU SHENTONG
LABEL AGENT CO.,LTD.
2/F, No. 167 Jiangbin Northroad,
Yiwu City
Zhejiang Province
CHINA

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 16, 2016	REFUSAL PROCESSED BY IB	
Sep. 24, 2016	APPLICATION FILING RECEIPT MAILED	
Sep. 23, 2016	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Sep. 23, 2016	REFUSAL PROCESSED BY MPU	73787
Sep. 22, 2016	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Sep. 21, 2016	NON-FINAL ACTION WRITTEN	92983
Sep. 20, 2016	ASSIGNED TO EXAMINER	92983
Sep. 20, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Sep. 15, 2016	SN ASSIGNED FOR SECT 66A APPL FROM IB	

International Registration Information (Section 66a)

International Registration Number: 1309140

International Registration Date: Mar. 24, 2016

Intl. Registration Status: REQUEST FOR EXTENSION OF PROTECTION PROCESSED

Date of International Registration Status: Sep. 15, 2016

Notification of Designation Date: Sep. 15, 2016

Date of Automatic Protection: Mar. 15, 2018

International Registration Renewal Date: Mar. 24, 2026

First Refusal Flag: Yes

TM Staff and Location Information

TM Staff Information

TM Attorney: OESTREICHER, SALIMA PA

Law Office Assigned: LAW OFFICE 108

File Location

Current Location: TMEG LAW OFFICE 108 - EXAMINING ATTORNEY ASSIGNED

Date in Location: Sep. 21, 2016